

Federal Court



Cour fédérale

**Date: 20240614**

**Docket: IMM-82-23**

**Citation: 2024 FC 917**

**Ottawa, Ontario, June 14, 2024**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**FELIPE IGNACIO CANIFRU CANDIA  
GISELA CAROLINA MARAMBIO CANIO  
FRANCISCA JAVIERA CANIFRU MARAMBIO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicants are a family: a married couple and a minor child. They applied for refugee protection in Canada because they feared being targeted by an individual who they understood was a well-connected member of a drug cartel, his criminal associates, and his family members. The Refugee Protection Division [RPD] refused their claim. The family appealed. The

Refugee Appeal Division [RAD] dismissed their appeal, finding that the family could be safe in the cities proposed as internal flight alternatives [IFA].

[2] On judicial review, the Applicants challenge the RAD's IFA assessment and in particular the RAD's finding that the agents of persecution lacked the motivation to look for them in the proposed IFA locations. The parties agree, as do I, that I should review the RAD's IFA determination on a reasonableness standard. I agree with the Applicants that the RAD's IFA analysis was cursory and did not account for critical context to the claims; the Applicants' particular circumstances were not taken into account in the analysis. This is a sufficiently central shortcoming on the core issue before the RAD and therefore requires redetermination.

## II. Background to the Refugee Claim and Appeal

[3] The Applicants are all citizens of Chile. The problems precipitating their asylum claim began in 2012. Over the period of a month, the Applicants' home was robbed, the Applicants were harassed, and Mr. Canifru was harassed, assaulted, and robbed. Mr. Canifru reported these incidents to the police. One of the Applicants' core allegations is that information Mr. Canifru gave to the police in his report led to the arrest and imprisonment of a well-connected member of a drug cartel, who the police had been unsuccessfully trying to arrest for some time.

[4] Mr. Canifru's assailant was eventually released from prison, though it is not clear from the evidence when. The evidence includes Facebook posts where this individual claims that he is determined to target those who betrayed him.

[5] The Applicants claim that over the course of seven years, they experienced harassment, death threats, further robberies and assaults from others affiliated with the attacker's criminal group and his family members. The Applicants reported a number of these further incidents to the police but they allege that these complaints were not taken seriously and no further investigations were made. During this time, the Applicants moved twice: first within their home city, and then to a different city. After their second move, the attacks stopped for approximately two years until 2017, when they were found in the new city and again experienced threats, attacks and harassment.

[6] Eventually in 2019, the Applicants moved back to their home city and within a few months, after further threats and attacks, Mr. Canifru decided he had to flee. After he left, the female Applicant, his wife, was targeted at her workplace. Her harassers told her that they were looking for her husband and that if he was not found, they would kill everyone. After that incident, the female Applicant and her child, the minor Applicant, fled Chile and joined Mr. Canifru in Canada. The Applicants also claim that the female Applicant's adult daughter (Mr. Canifru's stepdaughter) was followed multiple times from October 2021 to November 2021. She made police reports, but the police did not help her. In December 2021, she left Chile and came to Canada.

[7] The RPD made a number of negative credibility determinations about the Applicants' allegations, and found that the Applicants could safely relocate to one of the four proposed IFAs in Chile.

[8] On appeal, the RAD found the determinative issue to be IFA and addressed neither the RPD's credibility findings nor the Applicants' challenge to those findings on appeal.

[9] The RAD found that because there had not been any further actions taken against the Applicants' remaining family members in their home city, the Applicants had not shown that their attackers were motivated to look for them in the proposed IFA locations. The RAD also noted that the Applicants had not established that the agents of persecution had the means to find them. The RAD noted that the agent of persecution was likely from a local criminal organization and that when they had been previously found in a different city, it was closer to their home city than the proposed IFAs and they likely were followed from the home city.

### III. General Principles on the IFA Assessment

[10] It is well-established that a claim can be dismissed on the basis that relocation to an IFA would be both a safe and reasonable option for the claimant. The two-step test first evaluates the safety of the relocation: whether the claimant would be subject to a serious possibility of persecution under section 96 and/or to a risk of harm under subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] in the proposed IFA. This Court has affirmed that in evaluating whether there is section 96 or section 97 risk in the IFA, the decision-maker can consider the means and motivation of the agent of persecution in pursuing the claimants in the proposed locations. At the second stage, the inquiry is whether it would be reasonable, in all the circumstances, to expect a claimant to seek safety in the IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)* (CA), 1991 CanLII 13517 (FCA), [1992] 1 FC 706 at pp 709-711; *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at para 16).

[11] Only the first stage, the safety of the IFA, is at issue in this judicial review. The determinative issue is the RAD's finding that the agent of persecution lacked the motivation to pursue the Applicants in the IFAs.

IV. Failure to Challenge "Means" Finding

[12] The Applicants focused their challenge on judicial review on the RAD's motivation finding. The Respondent argued that the Applicants' failure to challenge the means determination was fatal to their judicial review because a lack of means alone can be a sufficient basis to dismiss a case based on IFA availability.

[13] It is certainly true that a finding that the agent of persecution did not have the means to pursue a claimant in a proposed IFA can be a basis on its own to dismiss a claim on IFA. My concern here is that the RAD's discussion on means is very limited, not strictly about an inability to locate, and appears to be tied to its motivation finding.

[14] The RAD did not find that the agents of persecution would be unable to find the Applicants in the proposed IFA locations. Despite the RAD using the language of "means", there is no discussion by the RAD about the agent of persecution's strict inability to pursue the claimants in the proposed IFA locations, rather the RAD identifies an impediment. The RAD found that the agent of persecution was from a local group without "far-reaching contacts". The implication being that it would not be easy for the agents of persecution to find Applicants in the proposed IFAs.

[15] I am not convinced that a different finding on motivation could not have impacted the means analysis. In other words, had the RAD found that the agent of persecution had high motivation, it may have found that even without far-reaching contacts in the proposed IFAs, the agent of persecution could pursue the Applicants in those locations.

[16] While certainly not always the case, I find here, given the RAD's discussion on means was not really focused on an inability to locate, I cannot find that the means assessment can stand alone unaffected by the determination on motivation. Accordingly, it is not fatal to the Applicants' judicial review application that the means finding was not challenged.

V. Motivation Finding

[17] The RAD finds the absence of further contact from the agent of persecution since the Applicants left Chile is determinative of the agent of persecution's lack of motivation. The RAD notes that though the agent of persecution indicated in a Facebook post that he was determined to track down those who betrayed him, "there is no evidence of any continuing threat at the RPD or in this appeal by [the agent of persecution] against the Appellants or through family members since they left Chile." The Member concludes that "a lack of attempts to locate the Appellants through family members is usually a good indicator of the lack of motivation of the agent of harm." For this last statement, the Member cites a 2013 decision of Justice Mactavish (then of this Court) where she notes the "common-sense proposition that if the gang was truly looking for the applicant, one of the first places it would go is to his family" (*Rodriguez Llanes v. Canada (Citizenship and Immigration)*, 2013 FC 492 at para 10).

[18] I do not take Justice Mactavish's statement to mean that there is a general common-sense rule that all agents of persecution, no matter the history or type of harm, the country, or their profile, will contact remaining family members if they are still motivated to look for the claimants. Justice Mactavish found, in the context of the decision before her, that it was reasonable to find that the gang in question would likely have contacted these family members if they continued to be interested in the claimant.

[19] As I noted in *Ramirez v Canada (Citizenship and Immigration)*, 2024 FC 561 [*Ramirez*] at paragraph 7, motivation findings are fact-specific decisions that may depend on how the RAD considered a number of factors including, among others: the identity and the nature of the agent of persecution, the reason the claimants were initially targeted, the steps the agents of persecution have taken, the length of time that has passed without contact, and the relationship the agents of persecution have to the applicants. There are numerous decisions of this Court that have found a lack of motivation finding to be reasonable after years of no contact by the agent of persecution (See for example: *Ramirez* at para 8; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 [*Leon*] at paras 16, 18, 23; *Torres Zamora v Canada (Citizenship and Immigration)*, 2022 FC 1071 at para 14). And there are other decisions, where this Court has found the RAD's lack of motivation finding to be unreasonable where it was based primarily on an absence of contact by the agent of persecution (see for example: *Rivera Benavides v Canada (Citizenship and Immigration)*, 2020 FC 810 at para 75; *Losada Conde v Canada (Citizenship and Immigration)*, 2020 FC 626 at paras 91–93; *Monsalve v Canada (Citizenship and Immigration)*, 2022 FC 4 at para 17). These are context-specific evaluations that depend on the facts of the claim and the reasons given by the decision-maker.

[20] Here, the RAD's motivation assessment is cursory. There is no consideration of the nature of the harms the Applicants had previously faced or that they were personally targeted for reporting a crime. The RAD did not consider that the harassment and threats took place over the course of seven years, long after the initial report, and that during this time, there were intermediary periods where the agents of persecution did not actively target the Applicants, and did not pursue the Applicants' other family members.

[21] The RAD does not reasonably factor the particular circumstances of the Applicants' claim into their assessment of motivation. Instead, there is a reliance on a general assertion that "a lack of attempts to locate the Appellants is usually a good indicator of the lack of motivation of the agent of harm" (emphasis added). The fundamental gap/missing step in the RAD's reasoning, is to determine, here, in these circumstances if it is a good indicator.

[22] The Respondent argued that on judicial review, like before the RAD, the Applicants could not point to any evidence of continuing motivation and this was fatal to their claim. While it is the Applicants' onus to make out their claim to the RPD and the RAD, this does not translate into a stand-alone requirement that they produce fresh evidence of continuing motivation or the claim fails. In my view, this sort of reasoning misses the big picture of what is at issue in a refugee claim: to determine whether the claimants require Canada's protection under section 96 or section 97(1) of IRPA. Certainly, if it is established that those one fears are not interested in targeting them in the proposed IFAs, then there is no basis to grant protection (*Leon* at para 23). But this assessment of motivation does not happen in a vacuum, detached from the totality of the claim; it must be grounded in the full circumstances of the case.



VI. Certified Question

[23] Applicants' counsel requested the following question be certified under subsection 74(d) of IRPA:

Given that different agents of persecution may employ different methods to search for a refugee claimant, in assessing the motivation of an agent of persecution to seek out a refugee claimant in a proposed IFA, may a panel rely on the failure of an agent of persecution to approach the family members of the claimant as prima facie evidence of a lack of motivation to seek them out? Or must the panel consider what facts are known about the agent of persecution in assessing the weight to be given to that factor? For example, are the agents of persecution known to usually or always seek out family members? Had family members ever been approached in the past? Is there a reason they may have stopped approaching the family for reasons other than a lack of interest? Is there evidence that the agent of persecution uses surreptitious methods such as surveillance, informants, or corrupt authorities to locate their targets, and as such has no need to approach family members to ascertain the whereabouts of the claimant?

[24] The Respondent opposed certifying this question.

[25] The Federal Court of Appeal has confirmed that in order to be certified, a question must be a serious question that (a) is dispositive of the appeal; (b) transcends the interests of the parties; and (c) raises an issue of broad significance or general importance (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46).

[26] As I have noted above, the evaluation of the motivation of an agent of persecution is a highly fact dependent inquiry. As such, I do not find that the proposed question is either

dispositive of the appeal or raises an issue of broad significance or general importance. I decline to certify.

**JUDGMENT in IMM-82-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed;
2. The RAD decision dated December 16, 2022 is set aside and sent back to be redetermined by a different decision-maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-82-23

**STYLE OF CAUSE:** FELIPE IGNACIO CANIFRU CANDIA, GISELA CAROLINA MARAMBIO CANIO, AND FRANCISCA JAVIERA CANIFRU MARAMBIO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 10, 2024

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** JUNE 14, 2024

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